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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS BARAHONA,

Defendant and Appellant.

B286774

Los Angeles County
Super. Ct. No. BA444265

APPEAL from a judgment of the Superior Court of Los Angeles County, David V. Herriford, Judge. Affirmed.

Edward H. Schulman, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Zee Rodriguez and Theresa A. Patterson, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant Carlos Barahona of committing eight sex offenses against his two minor children. The court sentenced defendant to life in prison without the possibility of parole, plus a consecutive term of 115 years to life in prison. On appeal, defendant argues insufficient evidence supports the jury's finding that he inflicted bodily harm on a child under the age of 14 when he forcibly sodomized his son. We affirm.

FACTUAL BACKGROUND

Defendant is the father of L.B. (born in April 2000) and J.B. (born in March 2001). Between 2010 and 2016, defendant, L.B., and J.B. lived with several of their extended family members in Los Angeles.

Sexual Abuse of L.B. (Counts 1, 3, 4, 5, 6, and 7)

Defendant started touching L.B.'s breasts and vagina when she was about 10 years old. After L.B. turned 11 or 12, defendant penetrated her vagina with his finger on at least 20 separate occasions.

During one incident when she was less than 14 years old, L.B. woke up to find defendant lying on her bed with his penis inside her vagina. When L.B. tried to move, defendant said, "don't move," and held her down until he ejaculated. Defendant forced L.B. to have vaginal intercourse with him more than 10 times.

On one occasion when she was 14 or 15 years old, defendant restrained L.B. and penetrated her anus with his penis. Defendant also orally copulated L.B., and forced her to

orally copulate him, on numerous occasions when L.B. was between the ages of 13 and 15.

After he was arrested, defendant admitted to the police that he may have started inappropriately touching L.B. when she was 10 years old. Defendant also admitted he had penetrated L.B.'s vagina with his penis "about ten times."

Sexual Abuse of J.B. (Counts 10 and 11)

Defendant sexually abused J.B. on at least two occasions. The first incident occurred when J.B. was 13 years old. Defendant forced J.B. into a bedroom and locked the door. Defendant "put his penis in [J.B.'s] butt." J.B. told defendant to stop and tried to push defendant away, but defendant "grabbed [J.B.]" and "didn't stop at all." Defendant kept "putting his penis in [J.B.'s] butt," causing it to bleed "a lot." J.B. was "very hurt" and "in a lot of pain."

The second incident occurred when J.B. was 15 years old. Defendant prevented J.B. from leaving the house to go to school. Defendant told J.B. to take off his clothes and threatened to hurt him if he didn't comply. When J.B. refused to take off his clothes, defendant struck the child with a belt. Defendant then removed J.B.'s clothes and "put his penis in J.B.'s butt," causing it to bleed. J.B. was in pain and "crying a lot."

PROCEDURAL BACKGROUND

Following a jury trial, defendant was convicted of two counts of forcible rape of a child over the age of 14 (Pen. Code,¹ § 261, subd. (a)(2); counts 1 and 5 [L.B.]); two counts of committing

¹ All undesignated statutory references are to the Penal Code.

a lewd act upon a child (§ 288, subd. (a); counts 3 and 4 [L.B.]); one count of forcible oral copulation against a child over the age of 14 (§ 288a, subd. (c)(2)(C); count 6 [L.B.]); two counts of forcible sodomy of a child over the age of 14 (§ 286, subd. (c)(2)(C); counts 7 [L.B.] and 11 [J.B.]); and one count of forcible sodomy of a child under the age of 14 (§ 286, subdivision (c)(2)(B); count 10 [J.B.]).² As to all counts, the jury found defendant committed the sex offenses against multiple victims (§ 667.61, subd. (e)(4)), and as to count 10, the jury found defendant inflicted bodily harm on J.B., a child under the age of 14 (§ 667.61, subd. (d)(7)).

The court sentenced defendant to life imprisonment without the possibility of parole for count 10, plus a consecutive aggregate term of 115 years to life in prison for counts 1, 5, 6, 7, and 11. As to counts 3 and 4, the court imposed concurrent terms of 15 years to life and 25 years to life, respectively.

Defendant timely appealed his convictions.

DISCUSSION

The only issue defendant raises on appeal is that insufficient evidence supports the jury's finding that he inflicted bodily harm on a child under the age of 14, as defined by section 667.61, subdivisions (d)(7) and (k), when he forcibly sodomized J.B. as charged in count 10. As we explain, substantial evidence supports the jury's finding.

When a defendant challenges the sufficiency of the evidence to support a factual finding, we review the entire record in the light most favorable to the judgment to determine whether

² The operative amended information did not include counts 2, 8, and 9.

any rational trier of fact could have found the evidence proved the elements of the crime beyond a reasonable doubt. (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.) The record must contain substantial evidence to support the verdict, i.e., evidence that is reasonable, credible, and of solid value. (*People v. Maury* (2003) 30 Cal.4th 342, 403.) We draw all reasonable inferences in favor of the judgment and do not resolve credibility issues or evidentiary conflicts. (*Manibusan*, at p. 87.)

Section 667.61, subdivisions (j)(1) and (l), provide that a defendant who commits, among other enumerated sex offenses, forcible sodomy under section 286, subdivision (c)(2)(B)³ against a child under the age of 14 is subject to a term of life in prison without the possibility of parole if one or more circumstances listed in subdivision (d) are found true, or if two or more circumstances listed in subdivision (e) are found true. Personal infliction of bodily harm on a child under the age of 14 is one of the circumstances listed in subdivision (d). (§ 667.61, subd. (d)(7).) Section 667.61, subdivision (k), defines “bodily harm” as “any substantial physical injury resulting from the use of force that is more than the force necessary to commit an offense specified in subdivision (c).”

Defendant concedes the evidence is sufficient to support his conviction for forcible sodomy under section 286, subdivision (c)(2)(B), that he inflicted “substantial physical injury” within the

³ Section 286, subdivision (c)(2)(B) provides: “Any person who commits an act of sodomy with another person who is under 14 years of age when the act is accomplished against the victim’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 9, 11, or 13 years.”

meaning of section 667.61, subdivision (k), when he caused J.B.'s rectum to bleed, and that J.B. was under the age of 14 when the crime was committed. Defendant argues only that he did not inflict J.B.'s injury using force beyond that which was necessary to commit forcible sodomy. (See § 667.61, subd. (k).) According to defendant, "the evidence established that such injury resulted from the very force necessary to commit the act of sodomy charged in [count 10]." We disagree.

Section 286, subdivision (a) defines "Sodomy" as "sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, *however slight*, is sufficient to complete the crime of sodomy." (Italics added.) For purposes of sodomy, "sexual penetration" requires "penetration past the buttocks and into the perianal area but does not require penetration beyond the perianal folds or anal margin." (*People v. Paz* (2017) 10 Cal.App.5th 1023, 1038.) Section 286 does not require a defendant to inflict any physical injury on the victim for the crime of sodomy by force to be complete. (See § 286, subds. (a), (c)(2)(B); CALCRIM No. 1030.) And defendant does not cite any cases that hold physical injury is an element of the crime of forcible sodomy.

J.B. testified that defendant "put his penis in [J.B.'s] butt" and continued to penetrate the child's anus after J.B. told defendant to stop and tried to push him away. J.B. also testified his "butt was bleeding a lot" and that he was "in a lot of pain" after defendant penetrated him. When asked what "happened to [his] butt to make it bleed," J.B. testified that defendant "was putting his penis in [J.B.'s] butt and it was bleeding a lot." Based on J.B.'s testimony, a jury reasonably could infer that, by using so much force to penetrate J.B.'s anus that he inflicted severe

pain on the child and caused the child's rectum to bleed "a lot," defendant used more force than was necessary to complete the "slight penetration" needed to commit forcible sodomy. Accordingly, sufficient evidence supports the jury's finding that defendant personally inflicted bodily harm on a child under the age of 14 when he committed the forcible sodomy charged in count 10.

DISPOSITION

The judgment is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P.J.

DHANIDINA, J.